No. 2877

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

H. H. RIDDELL,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR

Upon Writ of Error to the District Court of the United States for the District of Oregon.

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Upon Writ of Error to the District Court of the United States for the District of Oregon.

STATEMENT OF THE CASE.

The Indictment.

(Transcript pp. 4 to 24.)

The indictment charges that Riddell, together with Conway and Richet, his associates, having devised and

intending to devise a scheme and artifice to defraud Mrs. Patsey Doran, and divers other persons to the grand jury unknown, and to obtain from them and each of them money and property by means of false, fraudulent and misleading pretenses and representations, inducements and promises, which said scheme and artifice to defraud is hereinafter more specifically set forth and described, the said Riddell did knowingly, unlawfully and feloniously on July 12, 1911, at Portland, Oregon, place and cause to be placed in the postoffice at Portland, Oregon, and in the mails thereof and of the United States for the purpose of furthering and executing the said scheme and artifice to defraud, and for mailing and delivery, a certain letter set out in count one of the indictment;

And which said scheme and artifice so to defraud then and there being in and by the following means, methods, plans and modes, that is to say:

That the defendant, Riddell, together with the said Conway and Richet, his said associates acting personally and as officers of the Oregon Inland Development Company, an Oregon corporation, would falsely and fraudulently pretend, represent, promise and hold out to the said Mrs. Patsey Doran, and the said divers other per-

sons to the grand jury unknown and to the public generally:

a—That the said Oregon Inland Development Company was the owner of 40,000 acres of farm lands in the state of Oregon;

b—That the said defendant and his said associates and the said Company intended to and would subdivide the said 40,000 acres of land into 3,086 farms of the following price and size, to-wit:

2712 farms of ten acres each;
200 farms of 20 acres each;
150 farms of 40 acres each;
20 farms of 80 acres each;
2 farms of 160 acres each;
1 farm of 320 acres;
1 farm of 640 acres;

c—That the said company was the owner of 3,086 town lots in the townsite at Klamath Falls, Oregon, the county seat of Klamath County;

d—That the said defendant and his said associates and said company would sell one farm and one of said lots for the sum of $240 payable $10 down and $10 per month until the full sum of $240 should have been paid;

e—That the said 40,000 acres of land was by said company owned; was and is farm and fruit land of high quality, situated in sections 16 and 36 and located in the following named counties in the state of Oregon, to-wit:

Baker, Crook, Curry, Douglas, Grant, Harney, Jackson, Klamath, Lake, Linn, Lincoln, Malheur, Sherman, Union, Umatilla, Wallowa, Wasco and Wheeler;

f—That the said 40,000 acres of land so owned by said company were choice farm lands covered with sage brush and timber;

g—That in many cases the lands adjoining and contiguous to lands pretended by the said defendant and his said associates to be owned by the said company, were then being farmed and planted in orchards;

h—That the said lands so pretended to be owned by said company were also fruit and orchard lands;

i—That said company was the owner in fee simple of said 40,000 acres of farm land and of the said 3,086 town lots in Klamath Falls;

j—That the title of said company thereto was perfect and that any person purchasing the tracts offered for sale by said defendants and the said company would

receive good and sufficient title to said lands from said company.

And the defendant acting with his said associates did further falsely and fraudulently represent, promise, pretend and hold out to each and all of the persons hereinbefore mentioned and to the public generally:

a—That deeds to the said 40,000 acres of farm lands which vested title to said lands in said company had theretofore been executed by Veasen and wife.

That the said scheme and artifice so to defraud was to be further executed, carried out and effected by the defendants and his associates, and the company:

a—Increasing the price to be paid by the purchasers of said contracts of sale of said company from $240 to $300 each.

b—By falsely and fraudulently issuing, circulating, printing and distributing a certain illustrated booklet entitled, "Grand Ronde District, Oregon," which said booklet, among other things, contained a purported and pretended map and chart of Union, Wallowa and portions of Baker Counties, Oregon, and which said map of said counties had large portions thereof identified in red colors.

And the defendant and his associates, acting, as aforesaid, would and did further falsely and fraudulently pretend, represent, promise and hold out to the persons aforesaid, and to the public generally:

a—That each of said townships so on said map identified and outlined in red contained ten 20-acre tracts and farms owned by the said company;

b—That the most grave care had been exercised by the said defendant and his said associates acting as aforesaid in the selection of the said ten acre tracts owned and for sale by said company;

c—That the lands so claimed and represented to be owned by the said company in the counties of Union, Wallowa and Baker, aforesaid, were and are neither mountainous nor swamp lands;

d—That the said town lots so represented by them and by said company to be owned by it were a part of and contiguous and adjacent to the town and city of Klamath Falls, Oregon;

e—That each thereof was alone worth the amount of the selling price of the contracts of said company;

When in truth and in fact and as he, the said defendant, then and there well knew:

a—The said lands and lots so by defendant and his associates and said company pretended to be owned and claimed by said company at Klamath Falls, Oregon, were and are not at, in and a part of or contiguous or adjacent to the city and town of Klamath Falls, Oregon, but were and are situate and located elsewhere and are not of the value and amount at which the contracts of said company were sold and said lots were and are of little or no value whatsoever;

That the defendant and his said associates, in the execution and furtherance and as a part and portion of the scheme and artifice to defraud, would and did have printed and cause to be printed, published, circulated, mailed and generally distributed, large numbers of a certain poster, which said poster had written across it in bold red ink, "Grand Ronde District, Oregon," together with numerous half tone reproductions of photographs named, labeled and described by certain designations in the indictment;

Whereas, in truth and in fact and as the defendant well knew, the statements, labels and delineations, were false, fraudulent, misleading and untrue in every particular, and

Whereas in truth and in fact and as the defendant

well knew, the said pictures were taken upon lands not owned by said company and said pictures were false and untrue;

And whereas in truth and in fact and as the defendant then and there well knew,

a—The company was not the owner of 40,000 acres of farm land in the state of Oregon, nor the owner of 3,086 town lots at Klamath Falls;

b—The 40,000 acres of land so claimed to be owned by said company was not farm land or fruit land but was worthless land and unfit for orchard culture or cultivation;

c—The lands adjoining and contiguous to said lands pretended to be owned by said company were not capable of cultivation;

d—Neither the defendant nor the company was the owner of 40,000 acres of farm land or 3,086 town lots;

e—The deeds executed by John Veasen did not vest title to the lands in the company because the deeds were placed in escrow and were never delivered;

f—The townships designated in red on the map were false in this, that the company owned no lands in either Baker or Wallowa Counties, Oregon, and owned lands

in but six of the said townships designated in red;

g—The ten and twenty acre tracts advertised for sale by the circular entitled, "Grand Ronde District, Oregon," were not orchard lands of high grade and quality, but were worthless.

THE PROOF.

The defendant H. H. Riddell, a practicing attorney, was convicted in the United States District Court for the district of Oregon upon an indictment charging a violation of section 215 of the federal penal code. The defendant was the secretary and a director of the Oregon Inland Development Company, an Oregon corporation, during the entire existence of the corporation. There were three directors of the corporation—Frank Richet, who was also the president; and J. T. Conway, who was also the general manager. (See Corporation Minute Book Gov. Ex. 1 to 13 and 114.)

Prior to the date when the indictment against Riddell was returned Richet and Conway had been, in the same court and under similar indictment charging the same scheme to defraud, indicted, tried and convicted. (Tran. p. 130.)

Briefly, the indictment charges that Riddell, together with Conway and Richet, his associates, devised a scheme and artifice to defraud Mrs. Patsey Doran, and divers other persons to the grand jurors unknown, and the public generally, and to obtain from them and each of them

money and property by means of false, fraudulent and misleading pretenses, representations, inducements and promises. It is alleged in the indictment that the scheme to defraud of Riddell and his two associates, consisted in their advertising to the public that the corporation was the owner of 40,000 acres of land situated throughout the state of Oregon and of great value for agricultural and horticultural purposes; that these lands had been divided into 3086 farms as follows:

2712 farms of 10 acres each;
200 farms of 20 acres each;
150 farms of 40 acres each;
20 farms of 80 acres each;
2 farms of 160 acres each;
1 farm of 320 acres;
1 farm of 640 acres.

That the company was the owner of 3086 town lots at Klamath Falls, Oregon, and that the defendant and his said associates would sell one farm and one of said lots for the sum of $240, payable $10 down and $10 per month until the full sum of $240 had been paid.

It is further alleged in the indictment that many specific false representations were to be made by the defendants in the literature circulated by them, and par-

ticularly that pictures of lands were to be published upon the representations that the lands shown in the pictures were the lands the company was selling, and that they were of great value; the indictment charges in detail the names of the publications published and circulated by the defendant and his associates, and the specific false representations, inducements and promises alleged to have been made therein.

The indictment then proceeds to negative the truth of all of these representations and then alleges that the defendant, having devised the scheme and artifice to defraud, did knowingly and feloniously and for the purpose of executing the same, place and cause to be placed in the postoffice of the United States at Portland, Oregon, for mailing and delivery the several letters set out in the indictment. (Trans. pp. 4 to 24.)

The District Court sustained a demurrer to the sixth and seventh counts of the indictment and overruled the demurrer of the defendant interposed against counts one, two, three, four and five of the indictment. (Trans. p. 28.)

Following a trial the defendant was convicted upon counts three, four and five of the indictment. (Trans. p. 30.)

The bill of exceptions (Trans. p. 147) contains the following statement:

> "The statement of evidence contained in this bill of exceptions does not contain all the evidence which was introduced at the trial, but it does contain all the evidence relating to the mailing of complainant's exhibit 41, complainant's exhibit 42 and complainant's exhibit 119."

These three exhibits constitute and are the letters set out in the indictment, each of which it is therein charged that the defendant either mailed or caused to be mailed for the purpose of executing the said scheme and artifice to defraud.

The company was organized in 1909 for the purpose of exploiting what are designated in the evidence as the Veasen lands. These lands, as the proof showed, were situated throughout the mountainous sections of Oregon, were widely scattered and were located in the school sections numbered 16 and 36. They were located on the tops of mountain peaks, were wild, uninhabited, uncultivated, unimproved, rocky, arid, and absolutely worthless for any purpose whatsoever. (Trans., pp. 93, 94.) They were the Jones-Mays lands and had already figured prominently in important land fraud trials tried in the federal courts of Oregon some years ago. (Trans. p. 144.)

The organizers of the corporation, as shown by the record of the minute book, claimed to have an oral contract with Veasen for the sale of these lands transferred this oral contract to the company in exchange and payment for the entire capital stock of the company. By these transactions the company became the owner of a contract to purchase a large area of worthless lands and issued all of its capital stock in exchange therefor. The defendant was a party to this transaction. (Gov. Ex. 1 to 13, 114, Trans. p. 134.)

The company then at once began to advertise these lands extensively and through the agency of the mails distributed great quantities of literature, in all of which it was falsely asserted that the company owned 40,000 acres of land and that these lands had great agricultural and horticultural value. A plan was offered to the public by which a home could be secured for the payment of $240 payable in installments at the rate of $10 per month. It was widely advertised that these lands had been, by the company, subdivided into the following number of farms:

2712 farms of ten acres each;
200 farms of 20 acres each;
150 farms of 40 acres each;
20 farms of 80 acres each;

2 farms of 160 acres each;

1 farm of 320 acres;

1 farm of 640 acres.

Under the plan advertised by the company an applicant might receive a farm of 10 acres and he might receive a farm of 640 acres, but the farms were to be all of the same value. (Gov. Ex. 12, 13, 15, 17, 18, 28.) A reading of the contract will show that its author carefully attempted to avoid the postal laws and regulations relative to lotteries. (Gov. Ex. 25.)

It was admitted at the trial that the company never did own 40,000 acres of land or have any contract for the purchase of anything like that amount of acreage. (Trans. pp. 121, 139, 140.)

As above stated there were but three directors of the company and the defendant was one of these directors and the secretary of the company. The company issued a great deal of literature and sent it out in enormous quantities through the mails. The literature carried the name of the defendant upon it as the secretary of the company. (Gov. Ex. 12 to 18, 28, 29, 30, 31, 32, 38.) It was kept in the office of the company and on the counter, the tables, the floor, in fact, it was stacked up all around the office. During the early part of the

history of the company the defendant was in the office of the company sometimes every day, sometimes twice a day, and sometimes once a week. He saw the employes of the company mailing the literature out to the public. As the defendant would come in to the office of the company the other officers would show him the literature they were sending out. (Trans. pp. 62 to 88.) The literature was printed by printing concerns in the city of Portland, and the defendant, as secretary, signed the checks which paid for the publications. (Trans. pp. 82, 83.)

As soon as a contract holder had been secured and the first payment made, the stenographer of the company would forward to the contract holder a written acknowledgment of the remittance and would request that the contract holder write for additional literature for himself and friends. (Gov. Ex. 16.) These written acknowledgments bore the stamp signature of the defendant, who upon various occasions, stood behind the stenographers and saw them filling the forms out for mailing and knew that they were being used. (Trans. p. 70.) Some of the literature was posted upon the wall of the offices of the company where the defendant examined it and commented upon it. (Trans. p. 82.) During a large portion of the time that the literature

was being sent out to the public the defendant had his law office adjoining the office of the company and maintained with the company a general reception room. (Trans., p. 85.) The defendant signed the contracts appointing the selling agents of the company, and also, as secretary, signed all of the clearance receipts in which it was certified that the contract had been fully paid up. (Trans. p. 74, Gov. Ex. 19) (Trans. pp. 76, 86, 147, 138, 139; Gov. Exs. 26, 40, 41, 42.) The stenographers in the employ of the company testified that the defendant knew that the literature of the company bearing his name as secretary was being sent out in large quantities through the mails. (Trans. pp. 66, 67, 69, 73, 78, 81, 82.)

A large number of witnesses who were contract holders of the Oregon Inland Development Company and who had been on account of the representations contained in the literature of the company, induced to purchase the auction contracts of the company, testified that they had received more or less of all of the literature of the company from the Oregon Inland Development Company and through the mails of the United States. (Trans. p. 100.)

The advertising literature of the company was false and untrue in two particulars:

First, the company did not own 40,000 acres of land, nor did it own anything like a sufficient amount of acreage to give to the contract holders the lands purchased by them under the auction contracts (Trans. pp. 121, 123, 139, 141, 147, 109);

Second, the lands of the company were not as advertised, and many of them were absolutely worthless. (Trans. pp. 94 to 98, 105, 106, 109, 115.)

Until the fall of 1910 the company owned no lands at all. It had a contract with John Veasen to purchase from him the worthless Veasen lands, but had paid nothing upon the contract. (Trans., pp. 60, 77, 139.) The company had collected from the auction contract holders over $10,000 and had neither land nor money nor assets with which to redeem any of its contracts. (Trans. p. 116.) With affairs in this condition the company then entered into a contract with one C. R. Hibberd to purchase a large quantity of land situated in Union, Wallowa and Baker Counties, all in Oregon. The land was not described in the contract, which simply called for the purchase of approximately 17,000 acres of land. Hibberd did not even own the land which he was contracting to sell to the company and the best that can be said for this deal was that he testified that he intended to buy the lands for them. (Trans. pp. 118,

119, 139, Def. Ex. "E.") The contract holders who at that time held auction contracts to purchase the Veasen lands were notified by the company to surrender their contracts and they would be given in lieu thereof similar contracts calling for the purchase of lands in Union, Wallowa and Baker Counties. All of the contract holders then did this, and new contracts were issued to them in which contracts it was stated that the lands of the company would all be located in Union, Wallowa and Baker Counties in Oregon. (Trans. pp. 100, 101; Gov. Ex. 39.) The auction plan of the contract whereby a purchaser might secure a tract of 640 acres, or he might only get ten acres was still retained in the new plan. (Trans. p. 86, Gov. Ex. 39.) The contract holders were never notified that the company was insolvent or that the Veasen lands were worthless.

In addition to these transactions the company also sold a few tracts of land by a plan known as straight acreage under the terms of which the contract holder was promised a specific tract of land upon payment of the purchase price. (Trans. p. 121.) This feature of the operations of the company was not gone into or challenged by the government. (Trans. p. 117.)

During its existence the company sold 564 auction contracts, at a total sales price of $137,565 upon which

contracts it received in cash $62,189.70. Of the 564 auction contracts which it sold 184 of the auction contract holders paid up the amounts of the contract in full to the company. Of these 184 auction contract holders who paid out in full, six of them were transferred by the company to the straight acreage plan, leaving 178 auction contract holders, who paid out in full, and who received from the company absolutely nothing on account of their investments. These 184 contract holders who paid out in full, paid to the company $38,755.94 in cash. (Trans. pp. 116, 117, 100.)

Out of the entire total of 564 auction contract holders the company transferred but 94 of these to the straight acreage plan. Of the 94 who were so transferred, but six had their contracts paid up in full at the time of the transfer and the most of them had made to the company but one or two payments of $10.00 each at the time the transfer was made. (Trans. p. 117.)

At page 7 of the brief of plaintiff in error is contained the following statement:

> "The bill of exceptions makes it appear (p. 205) that the government proved that these lands were not fit for agriculture or horticulture, but this is not an accurate statement. The draft of the bill of exceptions that the court signed was prepared by the United States attorney. Just why he saw

> fit to omit the names of the witnesses who testified as to his contention concerning these lands we do not know. This statement was not discovered until this brief was being prepared. It is, however, not fair to defendant, and is not the fact."

It is true, as stated by the plaintiff in error, that the draft of the bill of exceptions signed by the Court was prepared by the United States attorney. A reference to the transcript discloses the interesting fact that while judgment was pronounced by the Court on March 20, 1916, the bill of exceptions was not signed by the Court until September 19, 1916. It became necessary for the United States attorney to prepare the bill of exceptions and in this respect to do the work which should have been done by the plaintiff in error. The bill of exceptions was drawn by the United States attorney because it was agreed upon between the parties that he should draw it. Before it was signed by the Court it was submitted to the plaintiff in error and to his attorney and expressly approved by both of them. The correctness of it has never been challenged by the plaintiff in error until he filed his brief, although over four months elapsed between the date when the bill of exceptions was signed and the date when his brief was filed.

The statement contained in the bill of exceptions

and now for the first time objected to by the plaintiff in error, is a true statement of the facts occurring at the trial. If there is any doubt concerning this statement at all we respectfully suggest to the plaintiff in error that he file with the clerk of the Court a transcript of the testimony of the witnesses who testified on behalf of the government relative to the value and the location of the Union County lands.

ARGUMENT.

The defendant Riddell has alleged sixty separate assignments of error and in his brief has discussed these assignments in thirteen chapters. For convenience we will answer his brief in a like form, discussing his assignments in the order in which he has done so.

Assignments of error 2, 3, 19, 25, 26, 27, 30, 31, 42, 48, 52, 53, 54, 55, 56, 57 and 59 are not mentioned in defendant's brief and we may presume therefore that he has abandoned them and need not give them attention in argument.

I.

Assignment 1.

The defendant claims that the Court erred in overruling a demurrer to the indictment. The indictment was in five counts. The defendant was convicted on counts three, four and five. Count one sets forth in detail the scheme to defraud, and counts three, four and five each make reference to the scheme set forth in count one and by such reference make the same a part

of each of said counts. The indictment is attacked on the following grounds:

a—The scheme to defraud as alleged in count one does not allege an intent on the part of defendant to defraud anyone;

b—If such intent does appear in count one no such reference is made to it in counts three, four or five that will serve to carry forward any allegation of intent to defraud;

c—Counts three, four and five do not set forth the name of the person or persons to be defrauded.

The indictment charges in count one that Riddell together with J. T. Conway and Frank Richet, his associates, having devised and intending to devise a scheme and artifice to defraud one Mrs. Patsy Doran and divers other persons to this grand jury unknown and to obtain from them and each of them money and property by means of false, fraudulent and misleading pretenses, representations, inducements and promises, which said scheme and artifice to defraud is hereinafter more specifically set forth and described, he, the said Riddell, did knowingly, unlawfully and feloniously * * * deposit and cause to be deposited a certain letter in the mails for the purpose of furthering and

executing the said scheme and artifice to defraud and attempting so to do * * * and which said scheme and artifice so to defraud then and there being in and by the following means, methods, plans and modes, that is to say:

That the said defendant, Riddell, together with Conway and Richet, his said associates, acting personally and as officers of the Oregon Inland Development Company, a corporation, would falsely and fraudulently pretend, represent, promise and hold out to the said Mrs. Patsy Doran and to said divers other persons to the grand jury unknown, and to the public generally, that the said company was the owner of 40,000 acres of land, etc.

We need not repeat the details of the scheme as alleged as they appear heretofore in this brief in the description of the indictment, but it is sufficient to say that a reference to them will show that the representations, pretenses and promises as alleged are fraudulent on their face and it will further be borne in mind that the indictment states that the defendant intended by his representations to obtain money and property from Mrs. Patsy Doran and other persons to the grand jury unknown.

Counts three, four and five specifically refer to the scheme in the following language:

> "That the said H. H. Riddell, together with one J. T. Conway and one Frank Richet, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of the false and fraudulent representations, pretenses and promises, set out in the first count of this indictment to which reference is hereby made and by which reference the said description of said scheme and artifice so to defraud is hereby made a part of this count three of this indictment, etc."

The test of the sufficiency of an indictment of this kind we think has been well stated in the case of Moffatt vs. United States, 232 Fed. 522, 530:

> "The crime here charged is made up of acts and intent, and this must be set forth in the indictment with reasonable particularity as to time, place and circumstance. The essential requirements—indeed, all the particulars—constituting the offense of devising a scheme to defraud are set out at length in this indictment and the *intent to defraud is manifest from the nature of the scheme itself.* This is sufficient. Walker vs. United States, 152 Fed. 111. * * * It is contended that the intent to perpetrate the fraud must be alleged in the part of the indictment which follows the videlicet, and that it is not sufficient to allege it in the descriptive part of the indictment. This contention is without merit. It is sufficient if it is charged in any part of the indictment. * * * In an indictment for mailing a letter in execution or attempted execution of

a scheme to defraud in violation of this statute, if the scheme is *sufficiently outlined to show its design and adaptability to deceive* and fairly acquaint the accused with what he is required to meet, it answers the requirements of the statute. Brooks vs. United States, 146 Fed. 223. * * * The test to be applied is, not whether the material averments of this indictment might have been made more accurate and certain, but whether they plainly embrace in their terms both requirements of notice of the ultimate facts to be proved against the accused, and specification thereof which will leave no second prosecution open for the alleged offense. If these requisites are sufficiently stated it is the duty of the Court to uphold the indictment."

And such has been the holding in

Colburn vs. United States, 223 Fed. 590.

Gould vs. United States, 209 Fed. 730, 734.

Gardner vs. United States, 230 Fed. 575, 578.

Hendry vs. United States, 233 Fed. 5.

The intent may appear from the nature of the scheme itself.

Walker vs. United States, 152 Fed. 111 (9th Cir.).

Spear vs. United States, 228 Fed. 487.

It is not necessary to allege facts making it appear that the scheme on its face is fraudulent. It is sufficient

if it is reasonably calculated to deceive persons of ordinary comprehension.

Oesting vs. United States, 234 Fed. 304 (9th Cir.).

It would make no difference if the defendant devised the fraudulent scheme whether he was acting for the corporation or in his own behalf.

Oesting vs. United States (supra).

Though this indictment may not be technically perfect, we respectfully submit that it charges a violation of section 215 in substance, and is definite enough to give the defendant notice of the ultimate facts to be proved against him and to prevent the possibility of a second prosecution for the same offense.

It is contended by the defendant that even if count one does charge an intent to defraud there is not sufficient reference to count one in counts three, four and five to charge an intent to defraud in the last mentioned counts. We have quoted above from the language of the indictment the reference made in counts three, four and five to the scheme to defraud charged in count one. We think the reference made in the latter counts to the scheme to defraud charged in count one is sufficient to enable any reasonable man of ordinary in-

telligence to understand that the whole scheme to defraud is intended to be incorporated by reference in the latter counts, and this is sufficient.

> Foster vs. United States, 178 Fed. 165, 171.
> Crain vs. United States, 162 U. S. 625.

It is next contended that the indictment does not name the persons to be defrauded. The scheme as alleged was a general scheme to defraud and of course when first planned the names of the particular victims would not necessarily be in the minds of the defendant. As said in the case of Gould vs. United States, 209 Fed. 730, 735:

> "Of course the defendants, when they devised the scheme to defraud set out in the indictment, if they did devise it for such purpose, did not know the names of the individuals who would be defrauded, and the grand jury in stating the scheme must state as the defendants understood it. We think the indictment sufficiently charges what is equivalent to a charge that it was the public generally which was to be defrauded."

Such has been the holding in

> Farmer vs. United States, 223 Fed. 903, 909.
> Finnegan vs. United States, 231 Fed. 561, 564.

II.

Assignments 4 to 18, 29 and 32.

The defendant contends in these assignments that the Court erred in admitting certain evidence which related to the sale of lands in the "Veasen" project.

The indictment states that it was a part of the scheme to defraud that the defendant and Conway and Richet would falsely represent that the Oregon Inland Development Company was the owner of 40,000 acres of choice farm lands adaptable for orchard culture; that the company had good title to these lands which had been vested in it by virtue of a deed theretofore executed to the company by John Veasen and wife, and that these lands would be sold for the sum of $240, payable in installments; that it was a further part of the scheme that the price to be paid by purchasers of contracts for the purchase of said lands was to be raised from $240 to $300 each.

In his argument on these assignments the defendant proceeds on the theory that the Veasen project had been abandoned more than three years before the indictment was found and that the letters charged in counts three, four and five of the indictment as having been mailed in pursuance of the plan to sell the Union

County lands had no bearing on the scheme to sell the Veasen lands.

As shown above, the indictment alleges a continuous scheme formed by Riddell and his associates to sell certain lands. The scheme was originally to defraud Mrs. Doran and other persons to the grand jury unknown, and the public generally, in offering for sale Veasen lands under false representations as to their character, and then offering them other lands in exchange, and raising the price from $240 to $300. The indictment alleges, and the proof shows, that this was all one continuous fraudulent scheme on the part of the defendant and his associates. (See statement of facts in this brief.)

The evidence here objected to was admissible for two reasons:

a—To show the existence of a continuous scheme to defraud the same people that varied not in its general plan to obtain money and property by means of false and misleading representations but only in the selection of bait to catch its victims;

b—To show the existence of an intent on the part of the defendant and his associates to defraud the persons named in the indictment, all the surrounding circum-

stances in connection with the defendant's business were admissible on the question of intent.

Samuels vs. United States, 232 Fed. 536, 541.
Sprinkle vs. United States, 141 Fed. 811, 816.
Shea vs. United States, 236 Fed. 73.
Stern vs. United States, 223 Fed. 762.

If it be held that this evidence was only admissible to show intent the Court properly limited the effect of the evidence in its instructions to the jury. (Trans. pp. 164, 165, 166, 155.)

Counsel devotes some argument in speculation as to how the jury would regard this testimony. If the defendant felt that more definite instructions should have been given with respect to this testimony as affecting the question of intent he should have requested the Court to so instruct the jury.

Moffatt vs. United States, 232 Fed. 522, 534.

The case of Marshall vs. United States, 197 Fed. 511, cited by defendant, is not in point. In that case the similar fraud proved was not alleged in the indictment as a part of the scheme. In the case at bar the indictment charges the sale of the Veasen lands as a part of the fraudulent scheme. Besides, this case has

been expressly limited and qualified in its application by the same court that rendered it in

Farmer vs. United States, 223 Fed. 903, 911.

III.

Assignment 13.

In the argument on this assignment objections are made,

a—To the admission in evidence of exhibit 16, which was a form letter, on the ground that the defendant Riddell's signature thereto was a stamp signature, and that there was no proof that he authorized the use of the stamp;

b—To the remarks of the court in admitting the said exhibit in evidence over objection.

The evidence amply justified the admission of this exhibit. The witness Ella O'Gara was a stenographer in the employ of the company; she testified that she had sent out a great number of copies of a mimeograph letter which is government's exhibit 16, which was a receipt for a partial payment by contract holders, and that Mr. Riddell had sat behind her several times and watched her filling in the forms so he naturally knew

they would be mailed. The signature of Mr. Riddell on this form was stamped. There is also testimony that at the time these receipts were being sent out Riddell knew that they were being sent out over his signature; that they were sent through the United States mails and were mailed at Portland (Trans. pp. 70. 71). It also appears in the evidence that Riddell signed many other similar form letters and also contracts which the company entered into.

There was no proper exception taken to the court's remark, the exception mentioned being only to the admission in evidence of the said exhibit (Trans. p. 71).

However, it is permissible for the trial judge in a federal court to comment on the evidence provided the facts and law justify such comment. The court directly stated that the evidence was only admissible as an inference to be drawn against the defendant and left the jury to say just what the inference was, if any (Trans. p. 71). Whatever inference the jury might have drawn from this statement, as to the court's idea of the guilt or innocence of the defendant was corrected by the instruction given charging the jury to disregard whatever opinion the court might have intimated as to the facts (Trans. 155, 156).

IV.

Assignment 28.

It is here objected that there was not sufficient evidence to connect the defendant with the mailing of the clearance receipts set forth in counts four and five of the indictment. The witness Fannie Dean was a stenographer in the employ of the Oregon Inland Development Company. She was shown the two clearance receipts set forth in counts four and five and asked through what agency they would be transmitted to the persons mentioned therein. She answered that the clearance receipts mentioned were first prepared by her and then taken to Richet and Riddell for their respective signatures and that after they had signed them the receipts would then be mailed to the persons therein mentioned. The defendant contends that the government was trying to show custom in doing business, and that this could not be done by testimony limited to these two particular papers.

We cannot see how this form of question could be prejudicial to the defendant. There had been testimony that the company had been sending out a large amount of literature with defendants named thereon and that this literature had gone through the mails and that the

defendant knew it; that he had signed numerous contracts as the secretary of the company; that form letters had been submitted to him for approval, which were also sent out to contract holders living at places distant from the office of the company. In fact, it had been shown that a large amount of the business of the company was done through the mails. Just before the testimony in regard to these particular certificates, the witness said that the form letters would be submitted to Mr. Riddell for approval (Trans. p. 88). This clearance certificate was a form in general use (Gov. Ex. 41, 42).

The testimony of the defendant himself shows the complete competency of this particular bit of evidence. He states that the clearance receipts were submitted to him before they were mailed; that they had to be signed by him before being mailed and that he knew that they would necessarily go through the mails to contract holders (Trans. p. 138).

The mailing of letters may be shown by evidence of the custom in the course of a man's private office and business.

Watlington vs. United States, 233 Fed. 247, 248.

V.

Assignments 20 to 24, inclusive.

A number of pamphlets and booklets, exhibits 28, 29, 30, 31 and 32, were admitted in evidence over the objection of defendant. It was proven that this literature contained many glaringly false and untrue statements and representations as to the character and quality of the lands that the Oregon Inland Development Company was selling. (See statement of facts in this brief and reference therein to record.) The defendant contends that these exhibits should not have been admitted because there is no proof that the defendant knew of the falsity of the statements in the same. A remark of the court in connection wih the admission of the pamphlet "Famous Fruits" (Gov. Ex. 29) is also claimed error.

a—The exhibits were properly admitted as tending to show that there was a fraudulent scheme. In offering proof of the scheme or artifice to defraud it has been repeatedly held by the federal courts of appeal that all surrounding circumstances in connection with the scheme are admissible to show its existence and the participation and intent on the part of the defendant. (Authorities are cited in consideration of this proposition under paragraph II, this brief).

b—J. T. Conway, as general manager of the company, got out this literature. Riddell, who had been an officer of the company since its creation, was one of the signers, as secretary of the company, of the contract by which Conway was employed as such general manager (Gov. Ex. 27). There was also abundant other evidence showing Riddell's close connection with the affairs and business of the company. (See statement of facts). In view of all this evidence the court properly admitted these pamphlets as a circumstance tending to show Riddell was knowingly participating in a fraudulent scheme.

The situation here is much like that in the case of Kaplan vs. United States, 229 Fed. 389, 390. The defendant there was convicted of having used the mails in furtherance of a scheme to obtain credit by means of a false financial statement. It was shown that the statement was prepared by a bookkeeper employed by Kaplan, which statement also contained the language,

> "The above figures are correct to my knowledge, all the figures have been compared and investigated before the submission of this statement to you."

Although it was shown that the bookkeeper prepared the statement and the defendant merely signed it, the appellate court held that this was sufficient to go to the

jury as to whether or not the defendant was responsible. The court said, in passing on this question,

> "It was defendant's duty, when he certified to the truth of these statements, to make the necessary investigation to enable him to do so honestly. It is not surprising that the jury declined to hold the bookkeeper solely responsible for the false statements."

This testimony may not have been conclusive but it was relevant and with other facts and circumstances constituted convincing proof upon the subject.

> Watlington vs. United States, 233 Fed. 247, 249.
>
> Moffatt vs. United States, 232 Fed. 522.

c—The court very properly and quite emphatically limited the effect of this testimony in its instructions to the jury. (Trans. pp. 161, 163).

d—We may here call the court's attention to the fact that there was no objection or exception taken to the court's remarks in this connection, so far as appears in the record, although defendant, in his brief, argues such remark to be error. The objection and exception merely went to the admission of exhibit 29. (Trans. pp. 79, 80).

VI and VII.

Assignments 33, 34, 35, 45, 46 and 47.

These assignments are addressed to the admission in evidence over objection of the letter and two clearance certificates which are the basis of counts three, four and five and are set forth in full therein, and also to the refusal of requested instructions that the jury should find the defendant not guilty on these counts. It is contended by the defendant, as to the letter set forth in count three,

a—That there was no proof to connect the defendant with the mailing of said letter;

b—That the letter shows on its face that it was not relevant to the scheme described in the indictment.

As to the clearance certificates set forth in counts four and five it is contended that there was no proof that the defendant mailed or caused them to be mailed.

As to the letter set forth in count three, the defendant argues that it could not possibly be adapted to the furtherance of the scheme charged.

It will be difficult to fully argue this contention from the evidence appearing in the bill of exceptions as it is expressly stated therein that it does not contain all the evidence which was introduced at the trial, but does

contain all the evidence relating to the mailing of the letter and receipts above referred to. (Trans. p. 147). However, we think that so much of the evidence as appears in the bill of exceptions shows that this letter as well as the receipts above referred to were a very material part of the fraudulent scheme.

The indictment alleges that it was a part of the scheme to falsely and fraudulently pretend, represent, promise and hold out to Mrs. Patsy Doran, to unknown persons, and the public generally, that the company was the owner of 40,000 acres of farm lands which would be subdivided into small tracts and sold for the sum of $240 each, payable in installments; that the company was the owner of this land and that it was of a very high quality suitable for farm and fruit land; that it was a further part of the scheme to increase the price to be paid by the purchasers of contracts for sale of said lands from $240 to $300 each, and circulate booklets containing false and untrue descriptions of the lands they were exploiting.

The proof abundantly shows that when the company was first organized it exploited certain lands known as the Veasen lands, which were located mostly on mountain tops, falsely representing these lands to be farm and fruit lands of high quality. Later the com-

pany made a contract to purchase certain lands in Union County, Oregon, and then started an extensive campaign for the sale of these lands upon glaringly false representations as to their character, pursuing the same system of publishing and distributing handsomely lithographed maps, posters and pamphlets lauding in extravagant terms the adaptability of the lands for farm and fruit culture, claiming that these lands were located in Baker, Wallowa and Union Counties, although it was shown that the only land it contracted to buy was in Union County and that was not fitted for farm or fruit land.

At this time the company was also raising the price of the new lands which the company was exploiting from $240 to $300. (See statement of facts in brief.) Riddell was consulted relative to the raising of the price (Trans. p. 75).

W. C. Hayward was one of the holders of an original contract for the purchase of a tract from the Union County lands. He made a purchase for himself and one for his son on March 1, 1911, at the agreed price of $240 for each contract. He completed his payments and paid in the full amount but never received his money or land or anything of value for the amount he paid. He identified the letter as one identical with the one he had re-

ceived at Manilla, Iowa, of date June 26, 1911 (Trans. 113, 114). If the proof above set forth constituted a scheme to defraud, then certainly this letter shows on its face that it was plainly in furtherance and in execution of such scheme. The letter states that Mr. Hayward would be given the opportunity of changing his contract to buy a tract for $240 on the auction plan to a contract to purchase a specific tract at a price of $300. As the lands which the company was offering to sell at $300 as shown by the proof were hardly more adaptable for farming and fruit culture than were the Veasen lands, this letter was certainly sufficient to go to the jury as tending to show that the company and its officers were intending to defraud Hayward out of an additional $60.00.

There was no proof that the defendant personally mailed this letter. Counsel contends that there is no evidence that he caused the letter to be mailed or set in motion the forces that led to its mailing. We have already shown in our statement of facts Riddell's close connection with this company from its very inception; that it was the custom to submit the literature and pamphlets of the company to him before they were sent out and that he signed all papers that required the signature of the secretary of the corporation; that all form let-

ters written were as a usual custom first submitted to him for approval. (Trans. pp. 88, 92.) They would be gotten up by Conway, who would write them generally in long hand and would be submitted to Richet and Riddell for approval after which they would be written up on the typewriter; then they would be sent out through the mails to all the contract holders. The defendant, in his own testimony (Trans. p. 138) admitted that form letters of the company were sometimes submitted to him for approval.

Counsel contends that the defendant could not have thought that the letter and receipts were mailed in furtherance of the scheme because he did not know that they actually were mailed. If the jury believed that the defendant collaborated in the preparation of this form letter which he must have known in the ordinary course of business would go by mail to various contract holders at points distant from the office of the company in Portland, then the jury should certainly be allowed to say whether or not Riddell was one of the persons causing this letter to be sent out.

Even if the defendant did not personally mail the letter and receipts if he contemplated that they should be mailed in the ordinary course of business and they were thereby mailed, he is responsible.

Shepard vs. United States, 160 Fed. 584, 593.
Watlington vs. United States, 233 Fed. 248.
Trent vs. United States, 228 Fed. 648, 650.
Bettman vs. United States, 224 Fed. 819, 828.

On the question as to whether the defendant can be held responsible for the mailing of a letter, in furtherance of a fraudulent scheme, by another, if he were a party to the fraudulent scheme which had contemplated the use of the mails, the court gave an instruction on that theory which was objected and excepted to by the defendant and this question will be considered under paragraph X in this brief.

It is also urged that there is not sufficient proof to connect the defendant with the mailing of the clearance receipts set forth in counts four and five of the indictment. Each of these receipts bears the defendant's own signature as secretary of the company. In his own testimony (Trans. p. 138) the defendant says that the clearance receipts were submitted to him before they were mailed, that they had to be signed by him before they could be mailed, that he knew that a large majority of the contract holders of the company lived in points outside of Portland, Oregon, where the company's office was located, and that as to them necessarily the clear-

ance receipts would go to them through the agency of the mails and would be mailed at Portland, Oregon; that if he had not signed the clearance receipts they would not have been transferred to the auction contract holders and that his signature was a part of the procedure by which the contract holder received his clearance receipt through the mails; that he read the clearance receipts before he signed them. There was also evidence to this effect by the witnesses O'Gara and Mrs. Fannie Dean, stenographers in the office of the company. This was surely enough evidence to go to the jury on the question of whether or not the defendant caused the mailing of these certificates. There is also further proof that E. H. Bryant and J. K. Hartline, the persons named in said certificates, respectively, each received his certificate through the mails.

It is also contended that if the defendant caused the letter and receipts to be mailed, the names of the parties whom he caused to mail them should be given. The case of Simmons vs. United States, 96 U. S. 360, is cited in support of this contention. However, this case was based upon an indictment for knowingly and unlawfully causing and procuring another to use a still in violation of law. We do not see how this case can be in analogy to the facts in the case at bar. Mailing and causing to

be mailed is in legal effect the same thing.

Shepard vs. United States, 160 Fed. 584, 593.

VIII.

Assignments 43 and 44.

These assignments related to the instructions of the court on the question of intent (Trans. pp. 162, 189). The defendant contends that the court took away from the jury the question of intent, and told them that if they found the defendant was a party to the scheme charged in the indictment and caused the mailing of the indictment letters he should be convicted regardless of whether or not he intended to do anything to injure or defraud anyone. It is claimed that the instruction had the effect of making the presumption of intent a conclusive one and of shifting the burden of proof on the defendant.

A review of the instructions given by the court will show them incapable of such construction.

Defining the meaning of a scheme to defraud, the court said:

> "Now, to devise, within the meaning of this statute, means to prepare a scheme, to lay a plan, to contrive. A scheme is a design or plan formed

> to accomplish some purpose. An artifice is an ingenious contrivance or device of some kind, and the term as used in this statute is equivalent to trick or fraud. To defraud implies or includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence generally imposed and are injurious to another, or by which an undue and unconscionable advantage is taken of another. It means to wrongfully deprive one of something which he already has. Fraudulent pretenses, representations or promises within the statute mean such fraudulent suggestions or representations of an existing or past fact, or promise as to the future by one who knows it not to be true as are adapted to induce the person to whom they are made to part with something of value." (Trans. p. 153.)

At page 154 of the transcript the court charges the jury that the burden is on the government to establish to their satisfaction beyond a reasonable doubt that Riddell either on his own behalf or with the assistance of Conway and Richet, or one of them, devised the scheme to defraud, that he could not be convicted on mere proof that Conway and Richet devised the scheme, if they did, even if defendant knew of their conduct and failed to protest against it; that he could not be liable unless he knew that the scheme or enterprise was fraudulent and consciously participated therein, knowing it to be such; that however wide the mark the representations of Conway and Richet may have been the defend-

ant could not be charged with criminal responsibility for them unless he acted in bad faith, and the burden of proving that he so acted devolves upon the government.

Again at page 156 the court tells the jury that if the defendant Riddell was a party to the scheme or aided or assisted in his accomplishment with *knowledge of its fraudulent character,* then he would be guilty, and it would be the jury's duty to so find.

At page 157 the court again states that if the jury find that there was a scheme to defraud and Riddell was a party thereto he must have knoweldge of its fraudulent character before being criminally liable.

Again, on the same page, the court tells the jury that if they can reconcile the testimony in the case upon the hypothesis of the defendant's innocence, it is their duty to do so.

Again, at page 160, the court says the intention of the defendant is the gist of the defense, that is to say, it must appear to their satisfaction and beyond a reasonable doubt, that he *intended to defraud* and in determining that question they should consider the testimony showing his connection with this corporation, his relation to it, the statements and representations, if any,

that were made to him by the officers and associates and promoters of the concern, and the motive, or want of motive, that may have induced him to engage or not to engage in such enterprise.

In the case of McGregor vs. United States, 134 Fed. 187, 196, which was a case involving a conspiracy to defraud the government, the court instructed the jury:

> "If you find that the natural and necessary consequence of what they did was to defraud the United States, they are presumed to have intended that result; and they cannot be acquitted on the conspiracy counts because they may not have thought their acts and the result of such acts to be a fraud on the government. Where the act intended to be accomplished is a fraud, it is the intent to do the criminal act which imparts to it the character of an offense."

It was contended by counsel in this case that the court by this instruction took away the element of intent from the jury, but the appellate court construing this instruction, together with others given by the court on the question of intent, said:

> "The record thus discloses that the jury were, we may say, repeatedly charged by the court that the actual intention to defraud was an essential element of the crime, without which no offense could have been committed, and that, unless such intention was found by the jury from the evidence, the defendants should be found not guilty. As the

record makes the case, this additional instruction of the court was not intended to modify or set aside any of the instructions theretofore given, but was intended to *explain to the jury a method provided by law by which the jury might, from the evidence, find whether or not such intention existed.* It is well settled that the law presumes that every man intends the legitimate consequence of his own acts, and that such acts, when knowingly done, cannot be excused on the ground of innocent intent. In both civil and criminal cases the intent with which an act is done is inferred from the result of the act itself, and the law presumes that every man intends the legitimate consequence of his own acts."

Agnew vs. United States, 165 U. S. 36, 49, 50.

We respectfully submit that no jury listening to these instructions given by Judge Bean, fair as they were to the defendant, could get the idea that the court was instructing them, as a matter of law, that the defendant intended to defraud or that the law presumed that he intended to defraud.

IX.

Assignments 39, 49, 50 and 51.

The court instructed the jury that it was not necessary for the government to prove the mailing of all the letters set out in the indictment; it was sufficient if

the jury was satisfied that one or more of such letters was mailed by the defendant or caused to be mailed by him and that such letter or document was in fact intended by the parties mailing it, in the execution of or to assist in the execution of the alleged fraudulent scheme. The defendant complains that by this instruction the jury was enabled to pronounce a verdict of guilty on all three counts on proof of the mailing of any one of the letters set forth in the indictment; that the defendant requested a separate instruction as to each of counts three, four and five, and that the court erred in not giving such instruction as requested.

This instruction does not carry with it the interpretation that counsel claims for it. A reading of the court's instructions at pages 151, 153, 155, 158, 159, 162 and 166, together with the instruction complained of does not convey any such construction. It will be noted also that the indictment is alleged in separate counts. The court of course is not bound to give its instructions in the language requested by counsel.

Besides, defendant was not prejudiced by such instruction even under the interpretation he claims for it. He was sentenced to serve a term of imprisonment of four months in the county jail and to pay a fine of $2,500, which was no more than could have been im-

posed upon conviction under a single count.

Trent vs. United States, 228 Fed. 648, 650.

X.

Assignments 38, 40 and 41.

The court charged the jury that if they believed that there was a scheme or device to defraud by means of false or fraudulent misrepresentations charged in the indictment entered into between the defendant and Conway or Richet, and that such scheme contemplated the use of the mails in his accomplishment, it would make no difference as far as the defendant's guilt is concerned which one of the conspirators mailed the letters charged in the indictment, if they were mailed at all, or whether he knew that they were mailed or whether he had any knowledge of the contents thereof, if, in fact, they were mailed by one of the conspirators or associates in furtherance of the unlawful scheme or device to defraud, to which the defendant Riddell was a party and of which he had knowledge.

We submit that there was no error in this instruction.

The evidence connecting the defendant with the

mailing of the letter and receipts set forth in the indictment has been discussed in our brief under paragraphs VI and VII.

A scheme to defraud with acts to effect it has the aspects of a conspiracy.

> Blanton vs. United States, 213 Fed. 320, 325.
> Marrin vs. United States, 167 Fed. 951, 955.

If there has been a joint contrivance, or joint participation, with a common purpose, the acts and statements of the one, while engaged in carrying into effect the common purpose, are evidence against the other, and this without the necessity of alleging conspirary in the commission of the offense.

> Belden vs. United States, 223 Fed. 726, 730.
> Blanton vs. United States (supra).
> Fitzpatrick vs. United States, 178 U. S. 304, 313.

If the letters were deposited in the mail pursuant to a scheme to which the defendant was a party, he is properly convicted even though he was not present when the letters were mailed.

> Hume vs. United States, 118 Fed. 689, 698.
> Rose vs. United States, 227 Fed. 357, 362.

If the letters were mailed by defendant's authorization or with his knowledge and acquiescence or was done by his partner in execution of their business enterprise, in legal contemplation the defendant caused the mailing to be done.

Burton vs. United States, 142 Fed. 57, 62.

It is not necessary in order to make it an offense to show that the defendant actually with his own hands placed non-mailable matter in a postoffice. If it appeared from the proof that it was done through his agency or direction by an emplaye or agent of the defendant employed and directed for that purpose, it was enough.

United States vs. Flemming, 18 Fed. 901.
United States vs. Bebout, 28 Fed. 522.
Richardson vs. United States, 181 Fed. 1.

XI AND XII.

Assignments 36 and 37.

These two assignments relate to the admission in evidence of two exhibits over the objection of the defendant, on the ground that they were incompetent, irrelevant and immaterial.

It has been held by federal appellate courts that this general objection is not sufficient for review:

Davis vs. United States, 107 Fed. 757.
Reilley vs. United States, 106 Fed. 905.
Steers vs. United States, 192 Fed. 1.

The first assignment relates to the admission in evidence of a letter written by one Hibberd who was then on the stand as a witness and was being cross examined by counsel for the government. He had testified on his direct examination that certain lands which were being offered for sale by the Oregon Inland Development Company were of a good character and contained good soil, and this letter indicated that at the time of writing the same he did not believe such to be the case. This was proper cross examination. As to assignment 37, Conway was a witness on the stand in behalf of Riddell and on direct examination testified that he had never examined the Veasen lands prior to October, 1910, and on cross examination was shown a letter dated July 27, 1910, and one dated August 2, 1910, exhibits 128-A and -B, which tended to show that he had made a statement to the contrary in one of said letters. This we contend is proper cross examination, at least for the purpose of tending to discredit the witness.

XIII.

Assignment 58.

Defendant requested the court to instruct the jury that

> "If the defendant believed the representations of the Oregon Inland Development Company with reference to the value of its lands to be true, he is entitled to acquittal."

The defendant complains that the court refused this instruction and that such refusal was error. We submit that the court, in its instructions, substantially gave the instruction requested by the defendant. (Trans. pp. 154, 155, 161, 163.)

The requested instruction did not take into consideration the evidence of the fact that the company did not own the lands it was selling and also the proof that the lands were not of the character represented, and the defendant's knowledge or lack of knowledge as to these matters.

A requested instruction is properly refused unless it ought to have been given in the very terms in which it is proposed. An instruction as to evidence which would have a tendency to divert the minds of the jury from the controlling effect which other proper evidence

may have on their decision, should be refused. The court may properly decline to give an instruction which would tend to mislead the jury. A request to instruct the jury upon the insufficiency of a part only of the testimony is objectionable.

Blanton vs. United States, 213 Fed. 320, 326.

CONCLUSION.

The Oregon Inland Development Company of which Richet was president, Conway general manager, and Riddell secretary—these three men constituting the entire board of directors—advertised to the world over their published names as such officers that the company was the owner of 40,000 acres of land; the evidence of the government showed that this statement was not true. They advertised that the lands owned by the company were agricultural lands and horticultural lands of great value; the evidence of the government showed that these statements were not true. They sent out advertising literature through the mails in large quantities upon which there were falsely portrayed scenes alleged to have been taken upon the lands of the company. Not only were these pictures false and untrue, but the company did not even own lands in the counties in which said pictures were taken. The pictures on the advertising literature which represented alleged scenes on the lands of the company in Baker County and Wallowa County were false and untrue because the company owned no lands at all in either of said counties. Throughout the existence of the company the contract holders

paid to the company at Portland, Oregon, through the mails, monthly remittances of $10 each until they had paid in the full sum of $62,189.70. Nothing of value was given to the contract holders in exchange or payment for the amounts of money they invested. There was no chance or opportunity for the investors to secure the much advertised farm of 640 acres or of 320 acres or of 80 acres, and the company did not own a sufficient amount of land to even give the contract holders the minimum allotment of ten acres each. The defendant who acted as secretary and director of the company, who maintained with the company a common reception room and saw and permitted thousands of copies of this false advertising literature going out to the people, has been justly convicted for his responsibility in this fraudulent enterprise.

We submit that the defendant had a fair and impartial trial and that the judgment of the district court should not be disturbed.

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